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opinion

1958

February 25

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CONCORD, N.H.

Mr. James J. Barry, Commissioner
Department of Public Welfare
State House Annex
Concord, New Hampshire

Re: Leon and Edith Woodus - Closed OAA - Derry

Dear Mr. Barry:

This is in reply to your letter of February 13, 1958, requesting the opinion of this office as to the effectiveness of certain provisions contained in wills executed by the above named in protecting any subsequent claim of the State for additional reimbursement for old age assistance previously granted.

Each will contains the following clause: "It is my will that all my just debts be paid, which debts shall include my debt to the State of New Hampshire Department of Public Welfare." From your letter it appears that certain real estate owned by Mr. and Mrs. Woodus was sold under an arrangement whereby your Department received partial reimbursement and that the recipients were permitted to retain the sum of \$3,500 which has been deposited in a joint bank account. You have advised us that statements have been signed by each of the recipients and filed with the bank to the effect that no change will be made in the account without the concurrence of your Department.

I gather from your letter that withdrawals by Mr. or Mrs. Woodus do not require your concurrence. Although no other name can be added to the existing account without the concurrence of your Department we see nothing to prevent either of the recipients from withdrawing the entire proceeds of the account and make such disposition thereof as he or she may desire.

Mr. James J. Barry, Commissioner

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Your specific inquiry is whether or not the provisions in the will for the payment of your claim will insure collection of any balance of your claim in the event of the death of both recipients before the entire \$3,500 has been withdrawn. Irrespective of the language contained in the wills it is our opinion that your Department is protected subject to the priority of claims provided therein by RSA 167:13 which provides that:

" . . . On the death of a recipient of old age assistance or aid to the permanently and totally disabled, the total amount of assistance paid under this chapter or RSA 161 shall be allowed as a claim against the estate of such person after payment of the expenses of administration, the necessary charges for the burial of the deceased and the payment of claims for the last sickness of the deceased. . . ."

We do, however, believe that it was wise to incorporate the provisions previously referred to in each of the Woodus' wills.

Very truly yours,

George T. Ray, Jr.
Assistant Attorney General

GTR/lt